

# ITEL

RECORDATION NO.

FILED 1428

**Itel Rail Corporation**

55 Francisco Street  
San Francisco, California 94133  
(415) 984-4000

November 3, 1987 NOV 6 1987 -10 25 AM

**INTERSTATE COMMERCE COMMISSION**

Hon. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

11/6/87  
36.00  
CC Washington, D. C.

Re: Assignment and Assumption of Leases, dated as of August 7, 1987, between Rex Railways, Inc. and Itel Rail Corporation

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$30 recordation fee.

Please record this Assignment and Assumption of Leases under a new recordation number. In addition, please cross-index this instrument to the following two leases:

- Lease Agreement dated as of June 4, 1982, between Rex Railways, Inc., as lessor, and Illinois Central Gulf Railroad, as lessee, which was filed with the ICC on July 7, 1982, under Recordation No. 13693.
- Lease Agreement dated as of August 4, 1982, between Rex Railways, Inc. as lessor, and Missouri Pacific Railroad Company, as lessee, which was filed with the ICC on August 23, 1982, under Recordation No. 13772.

The parties to the aforementioned instrument are listed below:

Rex Railways, Inc. (Assignor)  
616 Palisade Avenue  
Englewood Cliffs, New Jersey 07632

Itel Rail Corporation (Assignee)  
55 Francisco Street  
San Francisco, California 94133

This Assignment and Assumption of Leases provides for the assignment by Assignor to Assignee of all of Assignor's interest in the leases set forth in Schedule I attached hereto.

Hon. Noreta R. McGee  
November 3, 1987  
Page Two

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

*Patricia Schumacker*

Patricia Schumacker  
Legal Department

:ps  
Enclosures

cc: Ginny Hanger

Interstate Commerce Commission  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

11/6/37

Patricia Schumacker  
Legal Dept.  
Itel Rail Corp.  
55 Francisco St.  
San Francisco, Calif. 94133

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/6/87 at 10:35am, and assigned re-recording number(s). 13693-G & 13772-F

Sincerely yours,

*Norita R. McGehee*  
Secretary

Enclosure(s)

SE-30  
(7/79)

NOV 6 1987 - 10 25 AM

INTERSTATE COMMERCE COMMISSION

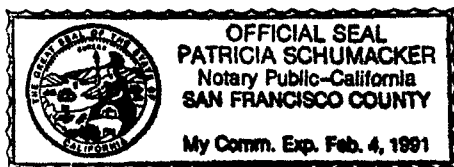
CERTIFICATION OF TRUE COPY

On November 3, 1987, I, Ginny Hanger, examined the original copy of the Assignment of Leases dated as of August 7, 1987 between Rex Railways, Inc. and Itel Rail Corporation and I hereby certify that I have compared the attached duplicate copy with the original, and that it is a complete, true and correct copy of the original in all respects, including the dates, signatures and acknowledgements thereof.

Ginny Hanger  
Ginny Hanger

STATE OF CALIFORNIA       )  
                                      ) ss:  
COUNTY OF SAN FRANCISCO )

On November 3, 1987, before the undersigned, a Notary Public for the State of California, personally appeared Ginny Hanger, known to me to be the person whose name is subscribed to the above instrument, acknowledged that she executed the same.



Patricia Schumacker  
Notary Public

NOV 6 1987 - 10 25 AM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF LEASES

Assignment and Assumption of Leases, dated as of August 7, 1987, between Rex Railways, Inc. ("Assignor") and Itel Rail Corporation ("Assignee").

WHEREAS, Assignor and Assignee have entered into an Agreement of Sale dated as of August 5, 1987 (the "Agreement of Sale") providing for the sale by Assignor to Assignee of certain XM general purpose unoccupied boxcars specifically identified in the Agreement of Sale (the "Boxcars"); and

WHEREAS, the Boxcars are, and following sale by Assignor to Assignee will be, subject to the two leases identified in Schedules 1 and 1(a) hereto; and

WHEREAS, the Agreement of Sale also provides for the assignment by Assignor to Assignee of all of Assignor's right, title and interest in and to such leases, as and to the extent such leases relate to the Boxcars.

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee, intending to be legally bound, hereby agree as follows:

1. Assignor hereby assigns, transfers and sets over to Assignee all right, title, interest, powers and privileges of Assignor as lessor of the Boxcars under the leases specifically identified in Schedules 1 and 1(a) hereto (the "Leases"), as and to the extent that such Leases relate to the Boxcars, and in and to any and all amounts that may be or become owing to the lessor under the Leases with respect to ownership, operation, leasing, use or maintenance of the Boxcars from and after the Closing referred to in the Agreement of Sale (the "Closing").

2. Assignor hereby represents and warranties to Assignee as follows:

Set forth on Schedules 1 and 1(a) hereto is a description of each Lease (which term includes all amendments, riders, equipment schedules and side letters thereto relating to the Boxcars, all of which are listed on Schedule 1 hereto). None of the Boxcars is subject to any lease other than one of the Leases. Assignor has furnished Assignee a true and complete copy of each Lease (as and to the extent such Lease relates to the Boxcars). The number and reporting marks of the Boxcars subject to each Lease are set forth on Schedule 1 to the Agreement of Sale. The expiration date of each Lease as such Lease relates to the Boxcars is not later than the date set forth on Schedules 1 and 1(a) hereto. As and to the extent the Leases relate to the Boxcars, the Leases constitute the legal, valid and binding obligations of Assignor, as lessor, enforceable in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally or by equitable limitations on the availability of remedies. Neither Assignor nor either

or of any event which with the giving of notice or the passage of time would constitute a default or event of default under any of the Leases and Assignor has not given or received from the lessee under any Lease any default notice.

3. Assignee shall indemnify Assignor against, and hold harmless Assignor from, any and all claims that may be asserted against Assignor, and any and all liabilities, losses, damages, costs and expenses that Assignor may suffer or incur caused by, resulting from or arising out of the Leases, at any time from and after the Closing.

Assignor shall indemnify, defend and hold harmless Assignee against any and all claims, liabilities, losses, damages, costs and expenses (including attorneys fees) caused by, resulting from, or arising out of (i) the Leases, prior to the Closing; and (ii) the untruth, inaccuracy or breach of any representations, warranties or agreements of the Assignor contained herein. The obligations of Assignor under this Section shall survive the Closing.

4. Assignor shall, at any time and from time to time after the Closing, at the request and expense of Assignee (except for attorneys fees of Assignor), do, execute, acknowledge or deliver or cause to be done, executed, acknowledged or delivered all such further acts, deeds, assignments, conveyances or assurances as may be reasonably requested by Assignee, including appropriate UMLER filings, for the better transferring, assigning, conveying, granting, assuring, vesting and confirming to the Assignee, of good, valid and marketable title, interest, and right to the Leases as they relate to the Boxcars.

5. Assignor shall, if requested by Assignee, sign a notice or notices to the lessees under each Lease, to be drafted by Assignee (i) notifying such lessees that Assignor has assigned its interest in the Leases to Assignee (as the Leases relate to the Boxcars), (ii) directing such lessees to forward records and revenues pertaining to the Boxcars to Assignee and to make appropriate filings and (iii) containing such other similar matters as Assignee shall reasonably request.

6. Assignee hereby assumes and accepts, and agrees to be responsible for, from and after the Closing, all of the obligations, duties and liabilities of the lessor of the Boxcars under the Leases and agrees that it shall, from and after the Closing, be treated as the lessor of the Boxcars for all purposes under the Leases.

7. Assignor and Assignee agree that, as between themselves, Assignor shall, from and after the Closing, be released from and relieved of the obligations, duties and liabilities of the lessor of the Boxcars under the Leases; provided, however, that Assignor shall remain responsible for such obligations, duties and liabilities attributable to or arising during, and shall retain all rights accrued or arising during, the period prior to the Closing.

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption of Leases on August 7<sup>th</sup>, 1987.

REX RAILWAYS, INC.

By *Charles A. Peltan*  
Title *President*

Attest *Peter Shan*  
*Asst* Secretary

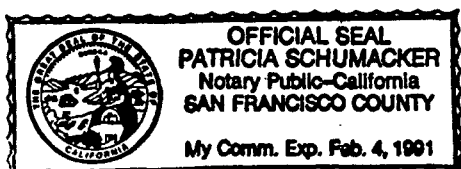
ITEL RAIL CORPORATION

By *W. H. Hayes*  
Title *President*

Attest *Howard L. Chiben*  
*Asst* Secretary

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF SAN FRANCISCO )

On this 6th day of August, 1987, before me personally appeared Desmond P. Hynes, to me personally known, who being by me duly sworn says that such person is President of IteI Rail Corporation, that the foregoing Assignment of Leases was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Patricia Schumacker  
Notary Public

STATE OF New Jersey )  
 ) ss:  
COUNTY OF Bergen )

On this 5th day of August, 1987, before me personally appeared Mark A. Salitan, to me personally known, who being by me duly sworn says that such person is President of Rex Railways, Inc., that the foregoing Assignment of Leases was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Janet Maguire  
Notary Public

JANET MAGUIRE  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Oct. 23, 1991



SCHEDULE 1

183-50'6" (interior length), 70-ton, Plate C, end-of-car  
cushioned XM boxcars

*Handwritten initials: MJP and SDH*

Boxcar No.

ICG 531481  
ICG 531523  
ICG 531542  
ICG 531550  
~~ICG 531573~~  
ICG 531574  
ICG 531588  
ICG 531605  
ICG 531946  
ICG 531964  
ICG 531985

*Handwritten: 531563 (circled) and SDH*

Boxcar No.

ICG 531521  
ICG 531541  
ICG 531547  
ICG 531555  
ICG 531565  
ICG 531581  
ICG 531599  
ICG 531613  
ICG 531961  
ICG 531979  
ICG 531986

CHTT005007  
CHTT005012  
CHTT005016  
CHTT005021  
CHTT005028  
CHTT005035  
CHTT005041  
CHTT005044  
ICG 531624  
ICG 531627  
ICG 531640  
ICG 531669  
ICG 531697  
ICG 531721  
ICG 531731  
ICG 531739  
ICG 531777  
ICG 531790  
ICG 531798  
CHTT012002  
CHTT012007  
CHTT012019  
CHTT012024  
CHTT012026  
CHTT012029  
CHTT012031  
CHTT012037  
CHTT012043  
CHTT012047

CHTT005003  
CHTT005011  
CHTT005013  
CHTT005019  
CHTT005023  
CHTT005034  
CHTT005037  
CHTT005042  
CHTT005048  
ICG 531626  
ICG 531629  
ICG 531648  
ICG 531685  
ICG 531710  
ICG 531723  
ICG 531737  
ICG 531742  
ICG 531788  
ICG 531796  
CHTT012001  
CHTT012005  
CHTT012012  
CHTT012022  
CHTT012025  
CHTT012027  
CHTT012030  
CHTT012036  
CHTT012041  
CHTT012045  
CHTT012051

183-50'6" (interior length), 70-ton, Plate C, end-of-car  
cushioned XM boxcars

Boxcar No.

CHTT012053  
CHTT012055  
CHTT012069  
CHTT012071  
CHTT012079  
CHTT012082  
CHTT012089  
CHTT012101  
ICG 531302  
ICG 531304  
ICG 531307  
ICG 531314  
ICG 531317  
ICG 531321  
ICG 531326  
ICG 531334  
ICG 531340  
ICG 531343  
ICG 531345  
ICG 531347  
ICG 531350  
ICG 531357  
ICG 531363  
ICG 531365  
ICG 531368  
ICG 531370  
ICG 531372  
ICG 531376  
ICG 531379  
ICG 531383  
ICG 531385  
ICG 531902  
ICG 531906  
ICG 531908  
ICG 531910  
ICG 531913  
ICG 531916  
ICG 531921  
ICG 531925  
CHTT007022  
CHTT007041  
CHTT007050  
CHTT007072  
CHTT007093  
CHTT007107  
CHTT007118  
CHTT007149  
CHTT007169  
CHTT013217  
CHTT013244  
ICG 531455

Boxcar No.

CHTT012054  
CHTT012067  
CHTT102070  
CHTT012076  
CHTT012081  
CHTT012087  
CHTT012092  
CHTT012105  
ICG 531303  
ICG 531305  
ICG 531310  
ICG 531315  
ICG 531319  
ICG 531323  
ICG 531333  
ICG 531338  
ICG 531342  
ICG 531344  
ICG 531346  
ICG 531349  
ICG 531353  
ICG 531362  
ICG 531364  
ICG 531367  
ICG 531369  
ICG 531371  
ICG 531374  
ICG 531378  
ICG 531381  
ICG 531384  
ICG 531387  
ICG 531905  
ICG 531907  
ICG 531909  
ICG 531911  
ICG 531915  
ICG 531920  
ICG 531923  
CHTT007017  
CHTT007039  
CHTT007045  
CHTT007053  
CHTT007074  
CHTT007103  
CHTT007114  
CHTT007128  
CHTT007168  
CHTT007191  
CHTT013233  
ICG 531416  
ICG 531466

~~SCHEDULE XXX~~ SCHEDULE 1(a)

1. Lease Agreement dated as of June 4, 1982 ("ICG Lease") between Rex Railways, Inc. ("Rex"), as lessor, and Illinois Central Gulf Railroad ("ICG"), as lessee.

- a. Amendment dated as of August 13, 1982.
- b. Amendment dated as August 10, 1983.
- c. Amendment dated as of September 6, 1983.
- d. Amendment dated as of September 6, 1985.
- e. Amendment dated as of February 13, 1986.
- f. Schedule executed on June 27, 1986 showing ownership of boxcars.
- g. Schedule executed on July 2, 1986 showing ownership of boxcars.
- h. Schedule executed on July 28, 1986 showing ownership of boxcars.
- i. Schedule executed on August 14, 1986 showing ownership of boxcars.
- j. Amendment dated as of November 5, 1986 between Merlease Leasing Corp., successor in interest to Rex with respect to 282 boxcars, and ICG.
- k. See 2(a) attached hereto.

Boxcars subject to ICG Lease: 107 boxcars identified by reporting marks on pages 1 through 2 of Schedule 1.

Expiration date: not later than December 31, 1987 for ICG 531300 - 531996 and not later than December 31, 1987 for ICG 532000 - 532170 (N.S.).

2. Lease Agreement dated as of August 4, 1982 ("MP Lease") between Rex, as lessor, and Missouri Pacific Railroad Company, as lessee.

- a. Amendment dated as of March 13, 1984.
- b. Schedule executed on June 27, 1986 showing ownership of boxcars.
- c. Schedule executed on July 2, 1986 showing ownership of boxcars.
- d. Schedule executed on July 29, 1986 showing ownership of boxcars.
- e. Schedule executed on August 14, 1986 showing ownership of boxcars.
- f. Schedule executed on November 19, 1986 showing ownership of boxcars.

Boxcars subject to MP Lease: 76 boxcars identified by reporting marks on pages 1 through 2 of Schedule No. 1

Expiration date: not later than January 31, 1988.

~~XXXXXXXXXXXXX~~  
SCHEDULE 2(a)

SCHEDULE 1(a) contd.

The ICG and Rex Railways, Inc. has agreed to an additional Amendment to the Leases mentioned in Schedule 2:

1. The Lease on the 107 Cars included in this Sale will expire December 31, 1987.
2. Earnings effective August 1, 1987 will be a 75/25 (Rex/ICG) split of off-line Car Hire as opposed to the present sharing arrangement, or \$275 per Car per month, based on a calendar quarter basis, whichever is the greater. This Amendment is presently being drawn up for execution.